

Chapter 9: Two Year Misdemeanors in the Michigan Penal Code



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This chapter contains an overview of two year misdemeanor traffic offenses found in the Michigan Penal Code. The discussion of each offense contains the following elements where relevant:

- The name of the offense.
- The text of the statute creating the offense.
- A summary of the elements of the offense.
- Criminal penalties.
- Licensing sanctions.
- Issues of importance to deciding cases involving the offense.

On attempted offenses, see Section 7.1.

9.1 Felonious Driving

A. Applicable Statute

MCL 752.191; MSA 28.661 provides:

“Every person who drives any vehicle upon a highway carelessly and heedlessly in wilful and wanton disregard of the rights or safety of others, or without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property and thereby injuring so as to cripple any person, but not causing death, shall be guilty of the offense of felonious driving and upon conviction thereof shall be sentenced to pay a fine not exceeding 1,000 dollars or to imprisonment in the state prison not exceeding 2 years or by both fine and imprisonment in the discretion of the court.”

B. Elements of the Offense

CJI2d 15.10 sets forth the elements of this offense as follows:

1. Defendant drove a vehicle on a street or highway;
2. Defendant drove in a grossly negligent manner;
3. The gross negligence caused an accident that injured another; and
4. The injury was crippling. A crippling injury is one that makes a person unable to use a part of his or her body or takes away his or her strength to be active and capable. A crippling injury does not have to be permanent.

CJI2d 16.18 (Gross Negligence) should also be given in connection with CJI2d 15.10.

C. Criminal Penalties

MCL 752.191; MSA 28.661 provides the following criminal penalties:

- Imprisonment for up to two years; or,
- Fine of up to \$1,000.00; or,
- Both.

D. Licensing Sanctions

1. Six points. The conviction is reported to the Secretary of State. MCL 257.320a(1)(d); MSA 9.2020(1)(1)(d).
2. Suspension of defendant's license is mandatory under statute for a period of one year. MCL 257.319(2)(c); MSA 9.2019(2)(c), and MCL 752.192; MSA 28.662.

E. Issues

Felonious driving is a crime against a person which focuses on both the culpable nature of defendant's actions and the resultant harm. The primary purpose of the statute is to protect persons from crippling injuries. One unit of prosecution arises whenever a defendant's reckless driving results in crippling injury to another; the defendant could be convicted of a count of felonious driving for each person who received a crippling injury. *People v Mathews*, 197 Mich App 143 (1992).

The defendant's grossly negligent conduct must be a proximate cause (not *the only* cause) of the accident. *People v Tims*, 449 Mich 83 (1995).

A conviction for felonious driving requires proof that defendant caused the accident that resulted in the injury, but does not require proof that defendant actually injured the pedestrian. In *Johnson*, a pedestrian was seriously injured when he was struck by an auto that was trying to avoid a collision with defendant's auto. At the time of the accident, defendant had gone through a stop sign and was driving at a high rate of speed in an attempt to get away from a police officer who was chasing him. *People v Johnson*, 174 Mich App 108, 117 (1989).

The felonious driving statute refers not only to the manner in which a vehicle is driven, but also to the operation of an inherently dangerous vehicle. Defendant's failure to adequately secure his trailer, which came loose from his car and struck the car in which the victims were riding, was criminally actionable under the felonious driving statute. A person who knowingly drives a vehicle that is so unsafe that it poses a substantial threat to the safety of others may be convicted of felonious driving. *People v Sherman*, 188 Mich App 91, 95 (1991).

A defendant can be convicted of both OUIL under Vehicle Code §625(1) and felonious driving even though intoxication is the only proof of the requisite mental state for felonious driving. *People v Crawford*, 187 Mich App 344, 347–52 (1991).

The statute seems to indicate alternative ways of committing felonious driving, including both acts of ordinary and gross negligence. But case law holds that gross negligence is required; ordinary negligence is insufficient. *People v Chatterton*, 411 Mich 867 (1981), aff'g *People v Chatterton*, 102 Mich App 248, 301 (1980).

Unlike the reckless or careless driving statutes which include driving in other areas, felonious driving must occur on a highway, but this is a seldom a contested element of the crime. See statutes cited in CJI2d 15.10, Commentary, and *People v Bartel*, 213 Mich App 726 (1995).

Gross negligence means more than carelessness. It means willfully disregarding the results to others that might follow from an act or failure to act. In *People v Orr*, 243 Mich 300, 307 (1928), the Michigan Supreme Court held that three necessary elements must be found:

1. Knowledge of a situation requiring the exercise of ordinary care and diligence to avert injury to another.
2. Ability to avoid the resulting harm by ordinary care and diligence in the use of the means at hand.
3. The omission to use such care and diligence to avert the threatened danger when to the ordinary mind it must be apparent that the result is likely to prove disastrous to another.

Double jeopardy was not violated when defendant was charged with both felonious driving and leaving the scene of an accident resulting in personal injury, when defendant was speeding while pursuing another motor vehicle and struck an oncoming motorcycle. A non-negotiated plea of guilty on the one charge did not prevent trying the other. *People v Goans*, 59 Mich App 294 (1975).

9.2 Negligent Homicide with A Motor Vehicle

A. Applicable Statute

MCL 750.324; MSA 28.556 provides:

“Any person who, by the operation of any vehicle upon any highway or upon any other property, public or private, at an immoderate rate of speed or in a careless, reckless or negligent manner, but not wilfully or wantonly, shall cause the death of another, shall be guilty of a misdemeanor, punishable by imprisonment in the state prison not more than 2 years or by a fine of not more than \$2,000.00, or by both such fine and imprisonment.”

B. Elements of the Offense

CJI2d 16.14 states the elements of this offense as follows:

1. The defendant was operating a motor vehicle on or about [*date*], at [*place*].
2. The defendant was operating the vehicle [at an unreasonable speed / in a negligent manner].
3. The defendant’s negligence was a substantial cause of an accident resulting in injuries to [*name deceased*].
4. Those injuries caused the death of [*name deceased*].

CJI2d 16.19 (Unreasonable Rate of Speed) and/or CJI2d 16.17 (Degrees of Negligence) may be given.

C. Criminal Penalties

MCL 750.324; MSA 28.556 provides the following penalties:

- Imprisonment for up to two years; or,
- Fine of up to \$2,000.00; or,
- Both.

D. Licensing Sanctions

1. Six points. The conviction is reported to the Secretary of State. MCL 257.320a(1)(a); MSA 9.2020(1)(1)(a).
2. License revocation is mandatory upon one conviction of negligent homicide. MCL 257.303(2)(e); MSA 9.2003(2)(e).

E. Issues

“The commonly-accepted definition of ‘immoderate’ is: ‘Not within reasonable limits.’ If one drives at a rate of speed that is not reasonable, he is driving at an immoderate rate of speed and not within reasonable limits. If under those circumstances he kills a person, he is guilty of negligence. The term ‘immoderate speed’ constitutes a form of negligence, and may result in damage to person or property. If it causes death, it is negligent homicide.” *People v McMurchy*, 249 Mich 147, 155 (1930).

Whether the defendant was driving at an immoderate rate of speed does not depend upon the rate of speed fixed by law for operating such vehicle. MCL 750.326; MSA 28.558, and *People v Florida*, 61 Mich App 653 (1975).

Michigan’s negligent homicide statute allows criminal liability to be premised on an act of ordinary negligence, permitting criminal sanctions without finding criminal intent. *People v Olson*, 181 Mich App 348 (1989).

Evidence of a violation of a penal statute creates a rebuttable presumption of negligence; the jury may infer negligence on the basis of the violation. The use of a statutory violation to establish negligence is a matter of judicial discretion. A statutory violation should only be used if:

- The statute is intended to protect against the result of the violation;
- The plaintiff is within the class intended to be protected by the statute; and,
- The evidence will support a finding that the violation was a proximate contributing cause of the occurrence.

Klanseck v Anderson, 426 Mich 78, 86 (1986), and *Zeni v Anderson*, 397 Mich 117 (1976).

A decedent’s contributory negligence is not a defense to a negligent homicide charge, but the jury may consider the decedent’s or a third person’s conduct in deciding whether the defendant was negligent and whether the defendant’s negligence was a proximate cause of the death. *People v Burt*, 173 Mich App 332 (1988), *People v Richardson*, 170 Mich App 470 (1988), and *People v Clark*, 171 Mich App 656 (1988) (evidence of the decedent’s failure to wear a seat belt was inadmissible to prove contributory negligence).

9.3 Reckless Driving Causing Miscarriage or Stillbirth

A. Applicable Statute

MCL 750.90e; MSA-- provides:

“If a person operates a motor vehicle in a careless or reckless manner, but not willfully or wantonly, that is the proximate cause of an accident involving a pregnant individual and the accident results in a miscarriage or stillbirth by that individual, the person is guilty of a misdemeanor punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both.”

B. Elements of the Offense

The elements of this offense are:

1. The defendant operated a motor vehicle in a careless or reckless manner.
2. The defendant’s conduct was a proximate cause of an accident.
3. The accident involved a pregnant woman.
4. The accident resulted in miscarriage or stillbirth.

C. Criminal Penalties

MCL 750.90e; MSA-- provides the following penalties:

- Imprisonment for not more than two years; or,
- Fine of not more than \$2,000.00; or,
- Both.

D. Licensing Sanctions

Six points. The conviction is reported to the Secretary of State. MCL 257.320a(1)(d); MSA 9.2020(1)(1)(d).

E. Issues

See *People v Selwa*, 214 Mich App 451 (1995), in which the Court of Appeals held that the evidence was sufficient to bind a defendant over for trial on a charge of negligent homicide, where the defendant caused an automobile accident involving a pregnant woman, who delivered a six-and-one-half month old baby by emergency cesarean section following the accident, and the baby

died two-and-one-half hours after delivery, and a certificate of live birth and a death certificate were both issued.

9.4 Unlawful Use of an Automobile, Without Intent to Steal

A. Applicable Statute

MCL 750.414; MSA 28.646 provides:

“Any person who takes or uses without authority any motor vehicle without intent to steal the same, or who shall be a party to such unauthorized taking or using, shall upon conviction thereof be guilty of a misdemeanor, punishable by imprisonment in the state prison for not more than 2 years or by a fine or [of] not more than 1,000 dollars: Provided, That in case of first offense the court may in its discretion reduce the punishment to imprisonment in the county jail for a term of not more than 3 months or a fine of not more than 100 dollars: Provided further, That the provisions of this section shall be construed to apply to any person or persons employed by the owner of said motor vehicle or any one else, who, by the nature of his employment, shall have the charge of or the authority to drive said motor vehicle if said motor vehicle is driven or used without the owner’s knowledge or consent.”

B. Elements of the Offense

CJI2d 24.2 lists the following elements for this offense:

1. The vehicle belonged to someone else.
2. The defendant used the vehicle.
3. The defendant did this without authority.
4. The defendant intended to use the vehicle, knowing that [he / she] did not have authority to do so.

CJI2d 24.2(6) further states that anyone who assists in using a vehicle is also guilty of this crime if he or she gave the assistance knowing that the person who was taking or using the vehicle did not have the authority to do so.

C. Criminal Penalties

MCL 750.414; MSA 28.646 provides for criminal penalties as follows:

- Imprisonment for up to two years; or,
- Fine of up to \$1,000.00.

Note: The statute does *not* say “or both.”

For a first offense, the court has discretion to reduce the punishment to:

- Imprisonment for up to three months; or,
- Fine of up to \$100.00.

Note: As is the case above, the statute does *not* say “or both.”

D. Licensing Sanctions

1. Two points. The conviction is reported to the Secretary of State. MCL 257.320a(1)(n); MSA 9.2020(1)(1)(n). The Secretary of State has interpreted “[a]ll other moving violations” in Vehicle Code §320a(1)(n) to include this offense.
2. If the defendant has no prior convictions for this offense within the preceding seven years, the Secretary of State must suspend the defendant’s driver’s license for 90 days. If the defendant has one or more convictions for the offense within seven years, the Secretary of State must suspend the defendant’s driver’s license for one year. MCL 257.319(6); MSA 9.2019(6).

E. Issues

To be convicted of unlawful use of an automobile, the defendant must have intended to take or use the vehicle, knowing that he or she had no authority to do so; no intent is required beyond the intent to do the physical act itself. This offense is a general intent crime. Voluntary intoxication is not available as a defense. *People v Laur*, 128 Mich App 453 (1983).

Unlawful driving away an automobile is a related felony under MCL 750.413; MSA 28.645.* The Court of Appeals has distinguished unlawful driving away an automobile from unlawful use of an automobile without intent to steal as follows:

“The distinction between the two offenses is that [the felony offense] requires the defendant to take possession of the motor vehicle without the owner’s permission, while the misdemeanor offense of unlawful use of a motor vehicle is committed when an individual, who has been given lawful possession of a

*See Section 8.3 for more information on unlawful driving away an automobile.

motor vehicle, uses it beyond the authority which has been granted to him by the owner.” *People v Hayward*, 127 Mich App 50, 61 (1983). See also CJI2d 24.4.

“Joyriding” is a term used to describe the felony offense, not the misdemeanor offense. See *People v Lerma*, 66 Mich App 566, 570 (1976), and *People v Hayward, supra*, 127 referring to the felony provisions of MCL 750.413; MSA 28.645 as “the ‘joyriding’ statute” and “a felony commonly known as ‘joyriding.’”

